

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-2771
Issue No. 2009
Case No. [REDACTED]
Hearing Date: January 4, 2012
Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on January 4, 2012.

ISSUE

Was disability, as defined below, medically established?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On April 15, 2011, claimant applied for Medicaid, was denied on September 28, 2011, per BEM 260, and requested a hearing on October 2, 2011.
2. Claimant's vocational factors on date of application are: age 52, high school plus education, and last 15 years of work experience as a semi-skilled cook.
3. In 2004, claimant's past employment ended due to being fired by [REDACTED] fast-food.
4. Claimant alleges disability due to disabling complaints of back problems and spinal stenosis (Medical Packet, page 87).
5. Medical exam on April 15, 2010 states the claimant stated he was diagnosed with intestinal colon cancer two to three years ago; that he denies having any treatment by an orthopedic or oncology specialist, and

it is questionable whether he has these physical/medical conditions or not; and that it is the impression of this examiner that the claimant exaggerates or dramatizes the degree of his impairment and pathology, perhaps in an effort to excuse himself from certain duties of his responsibilities; and that there appears to be restrictions to his ability to perform simple repetitive concrete tasks (Medical Packet, pages 58 and 59).

6. Medical exam on August 5, 2011 states the claimant's musculoskeletal is mildly decreased in range of motion of the cervical spine; that range of motion is intact in the upper extremity; that flexion is 30 degrees for the lumbar spine with the claimant having difficulty in extension beyond this point; that straight leg raising is 80 degrees bilaterally; that there appears to be mild distress in getting on and off the examination table; that he ambulated with flexion 30 degrees at the lumbar spine; that he could walk on his heels; that he had poor balance when attempting to walk on toes; that he had difficulty squatting and recovering—use exam table for support; that grip strength was 5/5 bilaterally (Medical Packet, page 82).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Facts above are undisputed.

"Disability" is:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The claimant has the burden of proof to establish disability by the preponderance of the evidence in accordance with the five step process below. 20 CFR 416.912(a).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, disability is not denied due to claimant not being engaged in current substantial gainful work on date of application.

At Step 2, disability is denied. The medical evidence of record, on date of application, does not establish the claimant's significant inability to perform basic physical work activities, for the required one year **continuous** duration, as defined below.

SEVERE/NONSEVERE IMPAIRMENT

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

Basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The question in this case is whether the claimant's medically diagnosed disorder significantly limit his ability, on date of application, to perform basic work activities, as defined above. Said in another way, do the diagnosed disorders impair the claimant slightly, moderately (nonsevere) or severely?

The medical reports of record are mostly examination, diagnostic, or treatment reports, and do not provide medical assessments of claimant's basic work limitations/restrictions.

Based on the medical evidence of record, this ALJ finds a nonsevere impairment has been established.

DURATION OF IMPAIRMENT

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

The medical evidence of record, on date of application, does not establish a severe impairment that had lasted or was expected to last for a one year **continuous** duration.

Therefore, disability has not been established at Step 2, as defined by above, by the competent, material and substantial evidence on the whole record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that disability was not medically established.

Accordingly, Medicaid denial is UPHELD.

William A Sundquist

William A. Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: January 6, 2012

Date Mailed: January 9, 2012

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

WAS/tg

cc:

